

CANCELING A CONTRACT: THE COOLING OFF RULE



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THE COOLING OFF RULE

If you buy something at a store and later change your mind, you may not be able to return the merchandise. However, if you buy an item from a salesman while in your home or at a location that is not the seller's permanent place of business, you may have the option of returning the merchandise. The Federal Trade Commission's (FTC's) Cooling-Off Rule gives you **three days to cancel purchases of \$25 or more**. Under the Cooling-Off Rule, your right to cancel for a full refund extends until midnight of the third business day after the sale.

The Cooling-Off Rule applies to sales at the buyer's home, workplace or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants. The Cooling-Off Rule applies even when you invite the salesperson to make a presentation in your home.

Under the Cooling-Off Rule, the salesperson must tell you about your cancellation rights at the time of sale. The salesperson also must give you **two copies of a cancellation form** (one to keep and one to send) and a copy of your contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain your right to cancel. The contract or receipt must be in the same language that's used in the sales presentation.

EXCEPTIONS

There are, however, some **types of sales that cannot be canceled** even if they do occur in locations

normally covered by the Rule. The Cooling-Off Rule **does not cover sales:**

- (1) under \$25;
- (2) for goods or services not primarily intended for personal, family or household purposes (The Rule applies to courses of instruction or training);
- (3) made entirely by mail or telephone;
- (4) the result of prior negotiations made by you at the seller's permanent business location where the goods are regularly sold;
- (5) needed to meet an emergency such as the sudden appearance of insects in your home, *and* you write and sign an explanation waiving your right to cancel;
- (6) made as part of your request for the seller to do repairs or maintenance on your personal property (purchases made *beyond* the maintenance or repair request are covered);
- (7) involving real estate, insurance, or securities;
- (8) involving the sale of automobiles, vans, trucks, or other motor vehicles sold at temporary locations, *if* the seller has at least one permanent place of business;
- (9) involving arts or crafts sold at fairs or locations such as shopping malls, civic centers, and schools.

HOW TO CANCEL

To cancel a sale pursuant to the Cooling-Off Rule, sign and date one copy of the cancellation form and mail it to the address given for cancellation, making sure **the envelope is post-marked before midnight of the third business day** after the contract date (Saturday is considered a business day but Sundays and Federal Holidays are not). Because proof of the

mailing date and proof of receipt are important, consider sending the cancellation form by **certified mail** so you can get a return receipt, or consider **hand-delivering** the cancellation notice before midnight of the third business day. If you hand-deliver the cancellation notice, however, make sure to (1) Get the name of the person to whom you delivered it, and (2) Deliver it before midnight on the third business day. Keep the other copy of the cancellation form for your records.

If the seller did not give you cancellation forms, you can write your own **cancellation letter**.

Nevertheless, it must be post-marked within three business days of the sale and again, for proof of mailing, consider sending your letter by certified mail. You do not have to give a reason for canceling your purchase. The federal law gives you the right to change your mind.

SELLER'S OBLIGATIONS IF YOU CANCEL

If you cancel the purchase, **the seller has 10 days** to:

- (1) Cancel and return any promissory note or other negotiable instrument you signed;
- (2) Refund all your money and tell you whether any product you still have will be picked up; and
- (3) Return any trade-in within 20 days after cancellation.

Within 20 days, the seller must either pick up the items left with you, or reimburse you for mailing expenses if you agree to send back the items.

Remember, if you received **any** goods from the seller, you must make them available to the seller in **as good condition as when you received them**. If you do not make the items available to the seller – or, if you agree to return the items but fail to – you remain obligated under the contract.

If seller does not take possession of such property within 20 days after tender by the buyer, **ownership of such property shall vest in the buyer** without obligation on his part to pay for it.

WHAT TO DO ABOUT PROBLEMS

If you have a complaint about sales practices that involve the Cooling-Off Rule, contact the FTC at 1-877-382-4357, TTY: 1-866-653-4261, file a complaint online at <http://www.ftc.gov>, or file a consumer complaint that may affect military members in particular at:

<http://www.ftc.gov/sentinel/military/index.shtml>.

You may also file a complaint against local businesses with the Nebraska Attorney General at: <http://www.ago.ne.gov/complaint>.

This handout is only intended to give general information, and not be used as a substitute for legal advice from a legal assistance attorney.

Resources:

- 16 CFR Part 429, Rule Concerning Cooling-Off Period
- Nebraska Revised Statutes, Sec. 69-1601-1607
- Federal Trade Commission:
<http://www.ftc.gov>, Consumer Protection, File a Complaint:
<https://www.ftccomplaintassistant.gov/>,
<http://www.ftc.gov/sentinel/military/index.shtml>
- Nebraska Attorney General, File a Consumer Complaint: <http://www.ago.ne.gov/complaint>